

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

2006 AUG -9 P 1:33

STEVE ADAMS,

Plaintiff,

v.

MERCHANTS FOODSERVICE, et al.,

Defendants.

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CIVIL ACTION NO.

2:06cv707-ID

NOTICE OF REMOVAL

1. Plaintiff filed the present action on June 29, 2006, in the Circuit Court of Chilton County, Alabama (Civil Action No. CV-06-204(B)) against defendants Merchants Foodservice, Don Suber, Andy Mercier, and Hal Henson ("Defendants"). Plaintiff alleges that defendants made false representations and/or suppressed material facts to induce him to accept a job with defendant Merchants Foodservice. Defendant Merchants Foodservice was served with the Complaint on July 10, 2006. (A copy of the State Court file is attached as Exhibit 1, and it contains the Summons and Complaint). Defendants Suber and Mercier have not been properly served with the Complaint pursuant to Rule 4(c)(1) of the Alabama Rules of Civil Procedure, but they received notice of the Complaint after July 10,

2006.¹ Defendant Henson has not been served with the summons and complaint. (Exhibit 1).

2. On June 29, 2006, defendant Merchants Foodservice was a citizen of Mississippi because it is incorporated in Mississippi and has its principal place of business in Mississippi. On June 29, 2006, defendants Don Suber and Andy Mercier were citizens of Mississippi because they both resided in and were domiciled in Mississippi. On June 29, 2006, defendant Hal Henson was a citizen of Florida because he resided in and was domiciled in Florida.²

3. In his complaint, plaintiff alleges that he has suffered “pecuniary loss, missed employment opportunities, expenses, and mental anguish.” (Complaint ¶ 14). While employed with defendant Merchants Foodservice, his annual salary was approximately \$62,500, and he was eligible for up to a 30% annual bonus. (See August 20, 2004 Offer Letter attached as Exhibit 2). Further, after plaintiff resigned his employment, he made a \$250,000 settlement demand on Merchants Foodservice on December 22, 2005. (See December 22, 2005 Letter attached as Exhibit 3).

4. Plaintiff’s state law claims are removable pursuant to 28 U.S.C. § 1332(a), which allows a defendant or defendants to remove a case to federal court

¹ The summons issued to defendants Suber and Mercier indicates that they were served with the Complaint on June 10, 2006. (Exhibit 1).

² Defendants Merchants Foodservice, Don Suber and Andy Mercier are currently citizens of Mississippi, and defendant Hal Henson is currently a citizen of Florida.

on the basis of diversity of citizenship when “citizens of different states are involved in the suit and the amount in controversy exceeds \$75,000, exclusive of interests and costs.” Hogans v. Reynolds, 2005 WL 1514070, *2 (M.D. Ala. June 24, 2005) (citing 28 U.S.C. § 1332(a)(1)).

5. Plaintiff is a citizen of Alabama while defendants Merchants Foodservice, Don Suber, and Andy Mercier are citizens of Mississippi, and Hal Henson is a citizen of Florida. As a result, there is complete diversity of citizenship.

6. Plaintiff’s unspecified demand for damages is not a bar for removal of this case. Instead, because there is no specific demand for damages, defendant “must prove by a preponderance of the evidence that the amount in controversy more likely than not exceeds the \$75,000 jurisdictional requirement.” Pensinger v. State Farm Fire & Casualty, 347 F. Supp. 2d 1101, 1006 (M.D. Ala. 2003). Plaintiff’s salary was \$62,500, with the opportunity for a 30% annual bonus. As such, should plaintiff receive a judgment comparative to his yearly salary, plus a 30% bonus, his judgment would exceed \$75,000. Further, plaintiff claims that he suffered other pecuniary loss and missed employment opportunities as a result of defendants’ conduct, which would exceed \$75,000 in damage. Additionally, plaintiff seeks punitive damages and damages for mental anguish, which often exceed \$75,000 in fraud cases. Finally, plaintiff’s counsel values the case at

approximately \$250,000 based on his settlement demand of December 22, 2005. As such, defendant has presented sufficient evidence to show that the amount in controversy exceeds \$75,000.

7. Because there is diversity of citizenship and because the amount in controversy exceeds \$75,000, plaintiff's state law complaint is removable to this Court pursuant to 28 U.S.C. § 1332(a).

8. In accordance with 28 U.S.C. § 1441, defendant Merchants Foodservice gives Notice of Removal of this action from the Circuit Court of Chilton County, Alabama, to the United States District Court of the Middle District of Alabama, Northern Division.

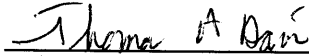
9. Pursuant to 28 U.S.C. § 1446(d), defendant Merchants Foodservice has served this Notice of Removal on all parties by U. S. Mail, and defendant is simultaneously filing this Notice with the Clerk of the Circuit Court of Chilton County, Alabama by overnight mail. (A copy of the Notice of Filing of Notice of Removal is attached as Exhibit 4).

10. This Notice has been filed within 30 days after service of the Complaint on the first served defendant.

11. All defendants who have been properly served and all defendants with notice of the Complaint join in this Notice of Removal.³

³ Defendant Henson has not been served with the Complaint and does not have notice of the Complaint.

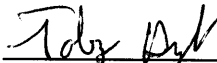
Respectfully submitted,



Thomas A. Davis (ASB-5877-S56T)

E-mail: tdavis@constangy.com

Direct Dial No.: (205) 226-5465



J. Tobias Dykes (ASB-0483-E66J)

E-mail: tdykes@constangy.com

Direct Dial No.: (205) 226-5469

CONSTANGY, BROOKS & SMITH, LLC

Suite 900, One Federal Place

1819 Fifth Avenue North

Birmingham, AL 35203

Facsimile: (205) 323-7674

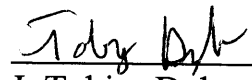
Attorneys for Merchants Foodservice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by placing a copy of the same in the U. S. Mail postage prepaid, addressed as follows:

Derrick Blythe, Esq.
126 Marshall Street
Alexander City, AL 35010

This the 9th day of August, 2006.



J. Tobias Dykes

EXHIBIT

1

Form ARCivP-93

8/91

CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

Case Number

C V 204 B

Date of Filing:

Month Day Year

Judge Code:

Month Day Year

GENERAL INFORMATION

IN THE CIRCUIT COURT OF

CHILTON

COUNT

Steve Adams

PLAINTIFF

Derrick Blythe

v. DEFENDANT

Merchants Food Services, et al

Name of first listed Plaintiff's Attorney

Name of Attorney (if known) of first listed Defendant

NUMBER OF PARTIES: PLAINTIFF(s)

1

DEFENDANT(s)

3

IS ANY PARTY: An out-of-state resident?

YES

NO

UNKNOWN

An out-of-county resident?

YES

NO

UNKNOWN

NATURE OF SUIT:

In the left hand column of boxes preceding the categories listed below, check the box (check only one) that best describes or categorizes the basis or theory of your suit. In the right hand column, check any secondary theories that are applicable to the suit.

TORTS
PERSONAL INJURY

- A ☐ Bad Faith
B ☒ Fraud
C ☐ Malpractice: Legal
D ☐ Malpractice: Medical
E ☐ Malpractice: Other
F ☐ Products Liability/AEMLD
G ☐ Negligence: General
H ☐ Negligence: Motor Vehicle
I ☐ Other:

TORTS
PROPERTY INJURY

- J ☐ Personality
K ☐ Realty
CONTRACTS
L ☐ Collection: Non-Mortgage
M ☐ Mortgage Foreclosure
N ☐ Insurance
O ☐ Pension
P ☒ Employment
Q ☐ Other:

- R ☐ REAL PROPERTY
S ☐ CIVIL RIGHTS: Prisoner
T ☐ CIVIL RIGHTS: Other
U ☐ WILLS/TRUSTS/ESTATES
V ☐ OTHER:

- EQUITABLE/
NON-DAMAGE ACTIONS
W ☐ Declaratory Judgment
X ☐ Injunction: Commercial
Y ☐ Injunction: Employment

- Z ☐ Injunction: Other
0 ☐ Extraordinary Writ
1 ☐ Other:

- STATUTES/RULES
2 ☐ Admin. Procedure Act
3 ☐ Railroad/Seaman (FELA)
4 ☐ Racketeering (RICO)
5 ☐ Workmen's Compensation
6 ☐ Wrongful Death
7 ☐ Other:

ORIGIN (check one): F ☒ INITIAL FILING R ☐ REMANDED A ☐ APPEAL FROM DISTRICT COURT I ☐ REINSTATED OR REOPENED O ☐ OTHER:

HAS JURY TRIAL BEEN DEMANDED? ☒ YES ☐ NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, ARCP, for procedure)

RELIEF REQUESTED: MONETARY AWARD ☒ YES ☐ NO

\$ _____ Compensatory
\$ _____ Punitive
\$ _____ Total
☒ Amount not specified

MARK IF APPLICABLE:

- D ☐ DECLARATORY JUDGMENT P ☐ POSSESSION
E ☐ INJUNCTION A ☐ ATTORNEY'S FEES
W ☐ EXTRAORDINARY WRIT O ☐ OTHER:

6/13/06
Date

Signature of Attorney/Party filing this form

DISPOSITION DATA (TO BE COMPLETED BY THE COURT)

DISPOSITION DATE:

Month Day Year

ADMINISTRATIVE DOCKET:

Month Day Year

TRIAL BEGUN NO VERDICT:

Month Day Year

T ☐ TRANSFER TO OTHER CIRCUIT/VENUE CHANGE

NEW VENUE:

DISMISSALS

- L ☐ Lack of Jurisdiction
C ☐ Want of Prosecution
R ☐ Dismissed With Prejudice
P ☐ Dismissed Without Prejudice
S ☐ Settled
X ☐ Other:

JUDGMENT ON

- F ☐ Default N ☐ Bench Trial
A ☐ Consent V ☐ Directed Verdict
B ☐ Pleadings W ☐ Judgment Notwithstanding the Verdict
M ☐ Summary Judgment O ☐ Other:
J ☐ Jury Verdict

JUDGMENT FOR

- P ☐ Plaintiff
D ☐ Defendant
B ☐ Both

JUDGE TAKING FINAL ACTION:

Judge Code

TRIAL DATES:

(If a Jury or Non-Jury trial was held)

TRIAL BEGAN

Month Day Year

TRIAL ENDED

Month Day Year

NUMBER OF TRIAL DAYS

Month Day Year

NATURE OF JUDGMENT:

MONETARY AWARD: ☐ YES ☐ NO

\$ _____ Compensatory
\$ _____ Punitive
\$ _____ Total

MARK IF APPLICABLE:

- D ☐ DECLARATORY JUDGMENT ENTERED P ☐ POSSESSION GRANTED
E ☐ INJUNCTION GRANTED A ☐ ATTORNEY'S FEES GRANTED
W ☐ EXTRAORDINARY WRIT O ☐ OTHER:

COURT'S ORIGINAL

COURT'S ORIGINAL

4 Defs

IN THE CIRCUIT COURT OF CHILTON COUNTY
AT CLANTON, ALABAMA

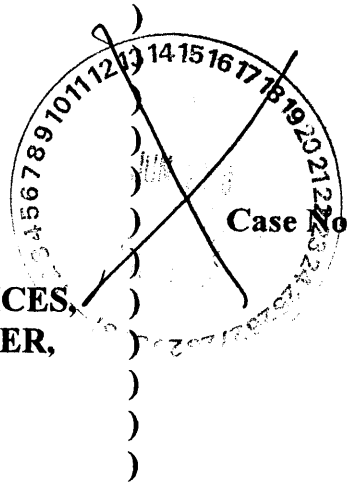
STEVE ADAMS,

Plaintiff,

v.

MERCHANTS FOOD SERVICES,
DON SUBER, ANDY MERCIER,
AND HAL HENSON,

Defendants.



Case No. CV-06-204B



LEAVE STAPLED
COURT'S ORIGINAL - RETURN

SUMMONS

To any sheriff or any person authorized by either Rule 4.1(b)(2) or 4.2(b)(2) of the Alabama Rule of Civil Procedure to effect service.

You are hereby commanded to serve this summons and a copy of the COMPLAINT in this action upon DEFENDANT: **MERCHANTS FOOD SERVICES, DON SUBER OR ANDY MERCIER OR HAL HENSON, 2450 BIG M BLVD, CLANTON, ALABAMA 35045.**

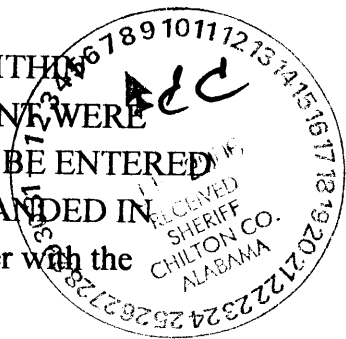
NOTICE TO DEFENDANT

The COMPLAINT which is attached to this summons is important and you must take immediate action to hand deliver a copy of a written Answer, either admitting or denying each allegation in the COMPLAINT to, DERRICK BLYTHE, the lawyer for the Plaintiff, whose address is: 126 MARSHALL STREET, ALEXANDER CITY, ALABAMA 35010.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your Answer with the Clerk of this Court within a reasonable time afterward.

Dated 6-29-06

Mike Smith
Clerk of Court FB



* * *

RETURN ON SERVICE

Received this summons at _____ on _____ and on

MERCHANT FORD at _____ I served it on the within named

DON SUZEN - MARY
MURKIN - HAL ARNS by delivering a copy of the process and accompanying document
to him.

Dated 7/10/24



Process Server Signature

Type of process server D.S.

Address: _____

Telephone No. _____

COURT'S ORIGINAL

IN THE CIRCUIT COURT OF CHILTON COUNTY
AT CLANTON, ALABAMA

STEVE ADAMS,

Plaintiff,

v.

MERCHANTS FOOD SERVICES,
DON SUBER, ANDY MERCIER
AND HAL HENSON,

Defendants.



Case No. CV-06-204B



SUMMONS

To any sheriff or any person authorized by either Rule 4.1(b)(2) or 4.2(b)(2) of the Alabama Rule of Civil Procedure to effect service.

You are hereby commanded to serve this summons and a copy of the COMPLAINT in this action upon DEFENDANT: MERCHANTS FOOD SERVICES, DON SUBER OR ANDY MERCIER OR HAL HENSON, 2450 BIG M BLVD, CLANTON, ALABAMA 35045.

NOTICE TO DEFENDANT

The COMPLAINT which is attached to this summons is important and you must take immediate action to hand deliver a copy of a written Answer, either admitting or denying each allegation in the COMPLAINT to, DERRICK BLYTHE, the lawyer for the Plaintiff, whose address is: 126 MARSHALL STREET, ALEXANDER CITY, ALABAMA 35010.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your Answer with the Clerk of this Court within a reasonable time afterward.

Dated 6-29-2006

Mike Smith
Clerk of Court

98

COURTS ORIGINAL - RETURN

* * *

RETURN ON SERVICE

Received this summons at _____ on _____ and on
_____ at _____ I served it on the within named
_____ by delivering a copy of the process and accompanying document
to him.

Dated _____

Process Server Signature
Type of process server _____
Address: _____
Telephone No. _____

IN THE CIRCUIT COURT OF CHILTON COUNTY
AT CLANTON, ALABAMA

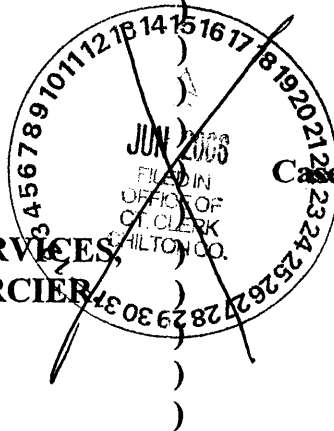
STEVE ADAMS,

Plaintiff,

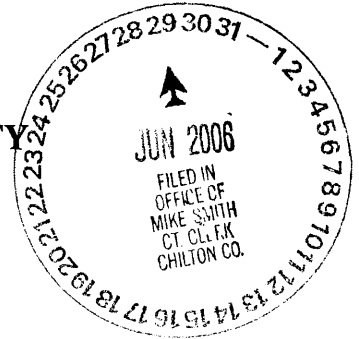
v.

MERCHANTS FOOD SERVICES,
DON SUBER, ANDY MERCIER,
AND HAL HENSON,

Defendants.



Case No. CV-06-204B



SUMMONS

To any sheriff or any person authorized by either Rule 4.1(b)(2) or 4.2(b)(2) of the Alabama Rule of Civil Procedure to effect service.

You are hereby commanded to serve this summons and a copy of the COMPLAINT in this action upon DEFENDANT: MERCHANTS FOOD SERVICES, DON SUBER OR ANDY MERCIER OR HAL HENSON, 2450 BIG M BLVD, CLANTON, ALABAMA 35045.

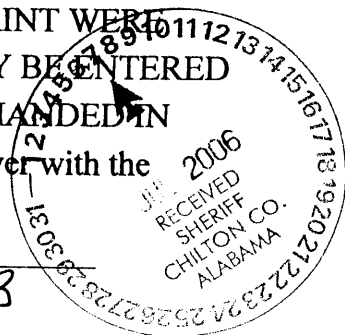
NOTICE TO DEFENDANT

The COMPLAINT which is attached to this summons is important and you must take immediate action to hand deliver a copy of a written Answer, either admitting or denying each allegation in the COMPLAINT to, DERRICK BLYTHE, the lawyer for the Plaintiff, whose address is: 126 MARSHALL STREET, ALEXANDER CITY, ALABAMA 35010.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your Answer with the Clerk of this Court within a reasonable time afterward.

Dated 6-29-06

Mike Smith
Clerk of Court



COURT'S ORIGINAL

COURTS ORIGINAL - RETURN

* * *

RETURN ON SERVICE

Received this summons at _____ on _____ and on
_____ at _____ I served it on the within named
_____ by delivering a copy of the process and accompanying document
to him.

Dated _____

Process Server Signature

Type of process server _____

Address: _____

Telephone No. _____

COURT'S ORIGINAL

IN THE CIRCUIT COURT OF CHILTON COUNTY
AT CLANTON, ALABAMA

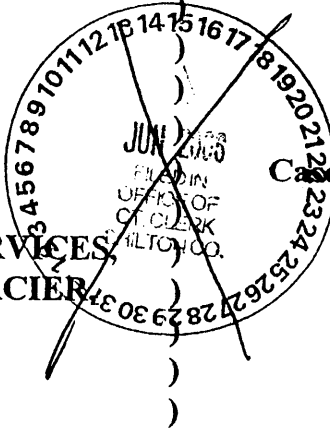
STEVE ADAMS,

Plaintiff,

v.

MERCHANTS FOOD SERVICES,
DON SUBER, ANDY MERCIER,
AND HAL HENSON,

Defendants.



Case No. CW-06-204-B



SUMMONS

To any sheriff or any person authorized by either Rule 4.1(b)(2) or 4.2(b)(2) of the Alabama Rule of Civil Procedure to effect service.

You are hereby commanded to serve this summons and a copy of the COMPLAINT in this action upon DEFENDANT: MERCHANTS FOOD SERVICES, DON SUBER OR ANDY MERCIER OR HAL HENSON, 2450 BIG M BLVD, CLANTON, ALABAMA 35045.

NOTICE TO DEFENDANT

The COMPLAINT which is attached to this summons is important and you must take immediate action to hand deliver a copy of a written Answer, either admitting or denying each allegation in the COMPLAINT to, DERRICK BLYTHE, the lawyer for the Plaintiff, whose address is: 126 MARSHALL STREET, ALEXANDER CITY, ALABAMA 35010.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your Answer with the Clerk of this Court within a reasonable time afterward.

Dated 6-29-06

Mike Smith
Clerk of Court 7B

COURT'S ORIGINAL

COURTS ORIGINAL - RETUF

* * *

RETURN ON SERVICE

Received this summons at _____ on _____ and on
_____ at _____ I served it on the within named
_____ by delivering a copy of the process and accompanying document
to him.

Dated _____

Process Server Signature
Type of process server _____
Address: _____
Telephone No. _____

IN THE CIRCUIT COURT OF CHILTON COUNTY
AT CLANTON, ALABAMA

STEVE ADAMS,

Plaintiff,

v.

MERCHANTS FOOD SERVICES
DON SUBER, ANDY MERCIER,
AND HAL HENSON,

Defendants.

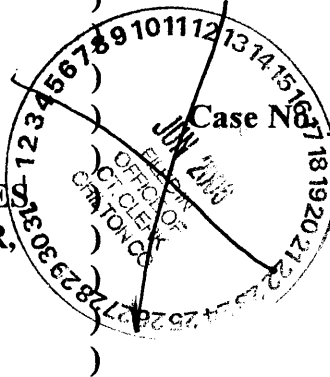
COMPLAINT

COMES NOW the Plaintiff, Steve Adams, who shows unto this Honorable Court the following, to wit:

1. On or about the 15th day of August, 2004, the Plaintiff was contacted by Defendant Merchants Food Services (herein Defendant Merchants) about possible employment with Defendant Merchants. Defendant Merchants contacted Plaintiff while he was still employed with Sysco Foods.

2. Defendant Merchants persistently pursued Plaintiff, and Plaintiff finally agreed to an interview once he learned of the potential salary with the new position.

3. Defendant Hal Henson (herein Defendant Henson), General Manager, Defendant Andy Mercier (herein Defendant Mercier), Corporate Vice President, and Don Suber (herein Defendant Suber), Corporate President, interviewed Plaintiff on or about the 28th day of August, 2004. During the interview, Defendants Henson, Mercier, and Suber made certain representations about certain aspects of the employment to Plaintiff, including, but not limited to, the following:



COURT'S ORIGINAL

COURT'S ORIGINAL - RETURN

- a. Plaintiff would only be required to work 8 to 8.5 hours a day or 40 to 42 hours a week;
- b. Plaintiff would have flexibility in setting his own hours;
- c. Plaintiff would only have to work a few nights on the night shift to get acquainted with that shift and the crew working that shift;
- d. Plaintiff would only have to work two (2) Saturdays per year for the purpose of physical inventory, and if Plaintiff did have to work a Saturday for anything other than the purpose of the inventory, he would be compensated with a day off; and
- e. Plaintiff was told that he would not have to worry about vacation time at Merchants and that he would not have to wait the usual 12 months before receiving time off, since he was giving up 17 days of vacation a year with his then current employer, Sysco – Defendant Henson told Plaintiff that he would allow him to take vacation time.

4. After an official offer of employment, including salary, was made to Plaintiff, he decided to accept the offer extended by Defendant Merchants, based on the aforementioned representations made by the Defendants to Plaintiff.

5. Once Plaintiff accepted employment with Defendant Merchants and began his tenure there, he learned that the representations that Defendants had made to him during his interview (§ 3, supra) were false and misleading, as evidenced by, but not limited to, the following:

- a. Throughout his 10.5 month employment with Merchants, Plaintiff was required to work 9 to 9.5 hours a day;
- b. Plaintiff was not allowed the flexibility of setting his own hours;
- c. Throughout his employment with Merchants, Plaintiff worked a total of 10 weeks on the night shift;
- d. Throughout his employment with Merchants, Plaintiff was required to work a total of 8 Saturdays (6 more than what Plaintiff was told

during his interview), without being compensated either monetarily or with any time off from work, as he was promised; and

- e. Throughout his employment with Merchants, Plaintiff was not allowed any time off, as was promised during his interview.

COUNT I

6. Plaintiff hereby adopts those statements contained in the previous paragraphs and incorporates them herein as though set out in their entirety.

7. At all times relevant hereto, Defendants had a duty to Plaintiff to speak the truth regarding his possible employment with Defendant Merchants and the aforementioned aspects of his employment.

8. Defendants intentionally, recklessly, and/or innocently made certain false representations of material existing facts prior to Plaintiff's employment with Defendant Merchants, in an effort to induce Plaintiff's action on the false representations.

9. In fact, Plaintiff did act on the false representations of material existing facts.

10. As a proximate result of Defendants' false representations, Plaintiff has suffered, and continues to suffer, harm, loss, and/or damage.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount determined by an enlightened trier of fact, plus costs and interest. In addition, Plaintiff seeks any other remedies at law or equity that are available to him but not specifically set out herein.

COUNT II

11. Plaintiff hereby adopts those statements contained in the previous paragraphs one through 10 and incorporates them herein as though set out in their entirety.

12. A confidential relationship and/or special relationship existed between Plaintiff and Defendants by virtue of the superiority of Defendants' knowledge

concerning the true facts surrounding the inducement of Plaintiff and the truth concerning the aspects of Plaintiff's employment with Defendant Merchants.

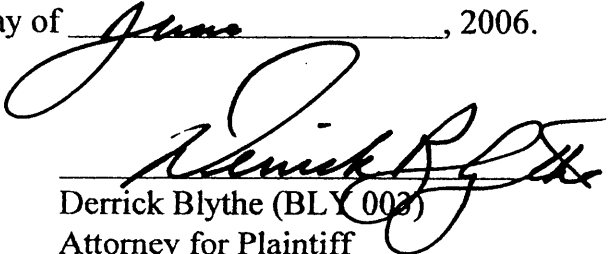
13. As a result of this relationship, Defendants had a duty to disclose the aforementioned material facts (§§ 3 and 5, supra).

14. As a proximate consequence of the suppression and/or misrepresentation of material facts as alleged and Plaintiff's reliance on such, Plaintiff was caused to suffer pecuniary loss, missed employment opportunities, expenses, and mental anguish.

15. Plaintiff demands punitive damages of the Defendants due to the intentional, reckless, and gross actions and/or omissions of the Defendants.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount determined by an enlightened trier of fact, plus costs and interest. In addition, Plaintiff seeks any other remedies at law or equity that are available to him but not specifically set out herein.

DATED this the 13 day of June, 2006.


Derrick Blythe (BLY 003)
Attorney for Plaintiff
126 Marshall Street
Alexander City, Alabama 35010
(256) 234-4101

IN THE CIRCUIT COURT OF CHILTON COUNTY
AT CLANTON, ALABAMA

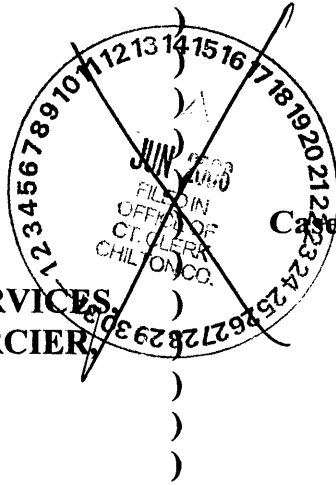
STEVE ADAMS,

Plaintiff,

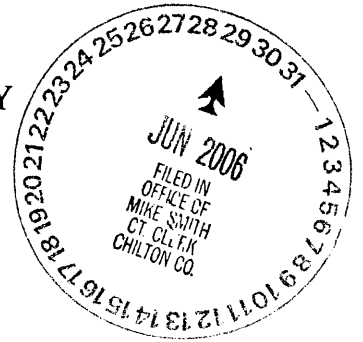
v.

MERCHANTS FOOD SERVICES,
DON SUBER, ANDY MERCIER,
AND HAL HENSON,

Defendants.



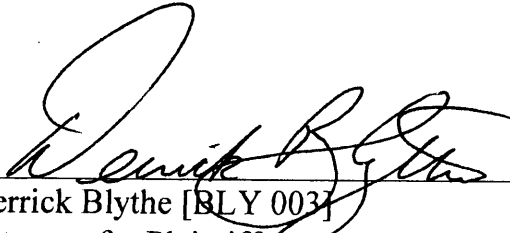
Case No. CV-06-204-B



DEMAND FOR JURY TRIAL

Please take notice that Plaintiff, STEVE ADAMS, demands trial by jury of
all of the issues in this cause.

DATED this the 13 day of June, 2006.


Derrick Blythe [BLY 003]
Attorney for Plaintiff
126 Marshall Street
Alexander City, Alabama 35010
(256) 234-4101

EXHIBIT

2



MERCHANTS FOODSERVICE

Serving Your Favorite Restaurants!

Post Office Box 2096
Clanton, AL 35046
(800) 844-0633 Fax: (205) 280-1748

August 20, 2004

Steve Adams
Alexander City, AL

Dear Steve:

I enjoyed having you visit our Clanton Distribution Center and am pleased that you took the time to do so. Without exception, each of the individuals with whom you spoke during your visit feel that you will do very well at Merchants Foodservice. I hope you found your visit interesting and worthwhile, and you were able to gather the information you desired about Merchants Foodservice, our potential and how it matches your individual goals.

I am pleased to extend you an offer to join our company as Operations Manager of the Clanton Distribution Center. Your annualized salary will be \$62,500. In addition to your base salary, you will be eligible for up to a 30% bonus based on improving sales and improving current operational and productivity standards. Our incentive program recognizes the personal sacrifice and commitment involved in providing leadership and the necessary supervision to improve on current standards. Bonuses are paid three times a year within 30 days after physical inventory.

The Company offers a benefits program which in addition to the usual holidays, includes vacation days, group health and dental insurance, life insurance, short term and long term disability plan, pension plan and a matching 401(K) plan.

When you combine our starting salary, bonus program and benefits package, I think you'll agree we offer a very attractive financial package.

We are very interested in having you join us for what we hope will be a long and successful career. Your future professional development should parallel with the development and expansion of Merchants Foodservice.

Mr. Steve Adams
August 20, 2004
Page Two



MERCHANTS FOODSERVICE

Serving Your Favorite Restaurants!

Post Office Box 2096
Clanton, AL 35046
(800) 844-0633 Fax: (205) 280-1748

As you consider this offer, keep in mind that Merchants Foodservice is a family owned company offering you a personal relationship with your employer while offering the growth of a much larger corporation.

Steve, I sincerely hope you will decide to join us and look forward to hearing from you in the near future regarding your decision. If you have any further questions or desire additional information about Merchants Foodservice or the benefits we offer, please call me at (205) 280-1710.

Very truly yours,

MERCHANTS FOODSERVICE

Hal Henson
General Manager
Clanton Distribution Center

HH/mra

TO INDICATE ACCEPTANCE of our offer, please sign and date the attached copy of this letter and return in the enclosed envelope.

I accept your offer as outlined above.

STEVE ADAMS

8-23-04
DATE

EXHIBIT

3

DERRICK BLYTHE

Attorney at Law
126 Marshall Street
Alexander City, AL 35010

Phone (256) 234-4101

Fax (256) 234-2044

December 22, 2005

Merchants Food Service
Attn.: Andy Marcier
1450 Big M Blvd.
Clanton, Alabama 35046

In re: Steve Adams
Date of Loss: August of 2004

Dear Mr. Marcier:

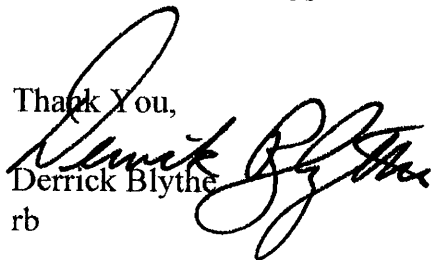
My office has been retained to represent Mr. Adams in his claim against your company. If you will recall, in August of 2004, your company and/or representatives thereof contacted Mr. Adams concerning potential employment. During the interview process and prior to employment, certain promises and representations were made regarding the job, the work conditions, and the duties and responsibilities of said employment. The facts were totally erroneous and misleading to the point that they constituted fraud. As a result, my client was caused to quit his previous job of some years and loose a substantial salary in addition to other incidental and consequential damages. We, therefore, demand \$250,000.00 in settlement of this claim. To avoid immediate legal action, please contact this office within 10 days or have your liability insurance carrier do the same.

Feel free to contact my office with any questions. Your prompt attention to this matter will be appreciated.

Thank You,

Derrick Blythe

rb



EXHIBIT

4

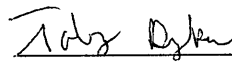
Thomas A. Davis (Bar No.: DAV094)
Direct Dial No.: (205) 226-5465
J. Tobias Dykes (Bar No.: DYK002)
Direct Dial No.: (205) 226-5469
CONSTANGY, BROOKS & SMITH, LLC
Suite 900, One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
Facsimile: (205) 323-7674

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by placing a copy of the same in the U. S. Mail postage prepaid, addressed as follows:

Derrick Blythe, Esq.
126 Marshall Street
Alexander City, AL 35010

This the 9th day of August, 2006.



J. Tobias Dykes